

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

In the Matter of License 4447 (Application 14024)
Juliana Mutual Water Company

ORDER APPROVING CHANGE IN PLACE OF USE,
ADDING NEW CONDITIONS AND AMENDING THE LICENSE

SOURCE: Unnamed Stream

COUNTY: Napa

WHEREAS:

1. License 4447 was issued to Dick Week on January 15, 1957 pursuant to Application 14024 and was recorded with the County Recorder of Napa on January 18, 1957.
2. License 4447 was subsequently assigned to Juliana Vineyards on June 6, 1992 and then re-assigned to Juliana Mutual Water Company on January 5, 1999.
3. A petition to change the place of use was filed with the State Water Resources Control Board (SWRCB) on October 13, 1997 and the SWRCB has determined that good cause for such change has been shown. Public notice of the change was issued on February 23, 1998 and protest issues have been resolved.
4. The SWRCB has determined that the petition for change in place of use does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
5. The license term relating to the continuing authority of the SWRCB should be updated to conform to section 780(a), title 23 of the California Code of Regulations.
6. The license term relating to the water quality objectives of the SWRCB should be updated to conform to section 780(b), title 23 of the California Code of Regulations.
7. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A term should be placed in the license making the licensee aware of possible obligations resulting from these acts.

NOW, THEREFORE, IT IS ORDERED THAT LICENSE 4447 IS AMENDED TO READ AS FOLLOWS:

1. Paragraph 3 of the license is amended to read as follows:

Recreational and stockwatering uses at Big Lake; irrigation and frost protection of 100 acres, and stockwatering, all within a gross area of 4,703 acres within Sections 2, 3, 4, 5, 7, 8, 9, 10, 11, 15, 16, 17, 18, 20, 21, 22, 27, and 28, T9N, R5W, MDB&M and Sections 33, 34, 35, T10N, R5W, MDB&M, as shown on map dated September 1997 on file with the SWRCB. The area served under this license and licenses issued pursuant to Applications 11236, 12851, 13597, 15164, 15934, 16267, 20060, 20061 and 24045 shall not exceed a net 1,893 acres within the gross of 4,703 acres.

2. A combined right limit shall be added to read as follows:

The total quantity of water diverted under this license, together with that diverted under licenses issued pursuant to Applications 11236, 15164, 16267, 20060, 20061 and 24045 shall not exceed 2,040 acre-feet.

3. The continuing authority condition shall be added to read as follows:

Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines,

after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

4. The water quality objectives condition shall be added as follows:

The quantity of water diverted under this license is subject to modification by the SWRCB if, after notice to the licensee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

5. License 4447 is amended to include the following Endangered Species condition:

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

(0000014)

6. For wildlife habitat enhancement, licensee shall continue to implement the revegetation plan submitted by licensee's letter dated July 19, 1991 (contained in the file for Application 22042). A minimum of 520 trees shall be planted. To be considered successful, each plant must be self-sustaining for at least three years. If mortality causes the number of plants to decline below the target survival rate of 75 percent, new plants shall be planted until the minimum 75 percent survival rate is attained. A report on the status and success of the revegetation program shall be submitted annually to the SWRCB until the 75 percent survival rate is attained. After completion of the tree-planting program, photograph documentation showing the trees and the stream corridor shall be submitted to the Chief of the Division of Water Rights.

(0000040)

7. For the passage and protection of wildlife in the area, license shall not clear vegetation, construct fencing, or otherwise disturb the existing drainage of the stream channels for a minimum lateral distance of 50 feet from the top of the bank on each side of all blue-line streams as shown on the U.S. Geological Survey 7.5 minute quadrangle maps St. Helena and Aetna Springs. This condition shall apply to all vineyard development occurring after the issuance of this Order for change in the place of use.

(0000040)

8. No construction shall be commenced and no water shall be used under this license until all necessary Napa County approvals have been obtained. Development can be programmatic in nature. A copy of the Napa County Approval, and any erosion control or vegetation preservation plans shall be forwarded to the SWRCB. (000J045)
9. Licensee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:
 - (1) Licensee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this license for noncompliance with the terms of the Agreement.
 - (2) Diversion of water under this license shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The licensee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.
 - (3) If reasonably determined to be necessary by the watermaster to determine Annual Depletion, Big Lake (Dick Week Reservoir) shall have a water level measuring device that documents continuous reservoir levels during the Accumulation Season, purchased (and replaced if necessary) by the watermaster and installed and maintained at the expense of the licensee.
 - (4) Licensee shall install at licensee's own cost such additional or other measurement devices as are necessary to measure actual depletions, if the watermaster determines that additional measures are necessary, consistent with Section 3.A.3 (Measuring Devices) of the Agreement.
 - (5) Licensee shall report to the watermaster annually, on or about September 1, the amount of water diverted to storage under this license at the beginning and end of the Accumulation Season as required by the watermaster. Such annual reports shall be made in writing on forms approved by the watermaster.
 - (6) Licensee shall allow the watermaster reasonable access to the project covered by this license to inspect measuring equipment and to verify compliance to terms and conditions of the Agreement, upon 48-hour prior notice and upon such reasonable conditions as licensee may prescribe.
 - (7) Licensee is hereby put on notice that there may be years when diversion of water under this license will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this license.
 - (8) In the event Allowable Depletion is exceeded in any year, licensee shall release water diverted to storage to the extent necessary to bring the Allowable Depletion into

compliance. Licensee's obligation to release water from storage shall be governed by the repayment provisions of the Agreement. (Agreement pp. 9, 10, and 11)

(9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa: (a) does not drop below 640,000 acre-feet in storage as of May 1, licensee shall have three years, starting in the next Accumulation Season, to make up or repay licensee's excess diversions; or (b) does not reach 640,000 acre-feet of storage as of May 1, licensee shall have one year, starting in the next Accumulation Season, to make up or repay licensee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, licensee shall be excused from any further obligation for repayment of the overage.

(10) Licensee shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.

(11) Licensee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the license.

(12) Licensee is hereby put on notice of licensee's right, upon reasonable prior notice, to inspect and to copy, at licensee's own expense, all records and reports of the watermaster.

Inclusion in the license of certain provisions of the Agreement shall not be construed as disapproval of other provisions of the Agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this license. (0000024)

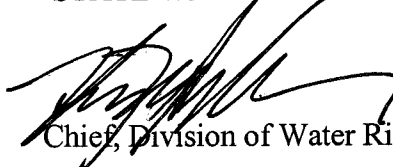
The SWRCB shall have continuing authority under article X, section 2 of the California Constitution, Water Code sections 100 and 275, and the common law public trust doctrine over this license to delete, revise, amend or adopt new terms or conditions to:

(1) implement the March 10, 1995 Condition 12 Settlement Agreement and any amendments to the Agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the SWRCB provides notice to affected parties and provides an opportunity for a hearing. (0000012)

10. License 4447 shall contain all other terms and conditions presently in License 4447 or updated terms to reflect present SWRCB policies.

Dated: JUN 15 2001

STATE WATER RESOURCES CONTROL BOARD



Chief, Division of Water Rights

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 14024

PERMIT 8538

LICENSE 4447

ORDER ALLOWING CHANGE IN PLACE OF USE AND PURPOSE OF USE

WHEREAS:

1. A petition for change in place of use and change in purpose of use as authorized by License 4447 has been filed with the State Water Resources Control Board and said Board has determined that good cause for such changes has been shown.

2. License 4447 was issued to Dick Week and was filed with the County Recorder of Napa County on January 18, 1957.

3. License 4447 was subsequently assigned to Bessie C. Harvey, Trustee of the F. C. Harvey Trust, and Margot A. Harvey and Harvey T. Granger, Trustees of the T. P. Harvey Trust No. 1, Tenants in Common.

4. The Board has determined that this change in place of use and change in purpose of use will not operate to the injury of any other legal user of water involved.

NOW, THEREFORE, IT IS ORDERED:

1. That permission is hereby granted to change the place of use under said License 4447 to a place of use described as follows:

RECREATIONAL AND STOCKWATERING USE AT THE RESERVOIRS,
IRRIGATION AND FROST PROTECTION OF 100 ACRES, AND
STOCKWATERING, ALL WITHIN A GROSS AREA OF 3,700 ACRES

WITHIN SECTIONS 2, 3, 4, 5, 7, 8, 9, 10, 11, 16, 17, 18 AND 20, T9N, R5W, MDB&M AND SECTIONS 33, 34 AND 35, T10N, R5W, MDB&M, AS SHOWN ON MAP FILED WITH STATE WATER RESOURCES CONTROL BOARD. THE AREA SERVED UNDER THIS RIGHT AND THOSE RIGHTS INITIATED BY APPLICATIONS 11236, 12851, 13597, 15164, 15934, 16267, 20060 AND 20061 SHALL NOT EXCEED A NET OF 1,600 ACRES WITHIN THE GROSS AREA OF 3,700 ACRES.

2. That permission is hereby granted to change the purpose of use under said License 4447 as follows:

IRRIGATION, FROST PROTECTION, STOCKWATERING AND RECREATIONAL.

Dated: JUN 29 1973

K. L. Woodward
K. L. Woodward, Chief
Division of Water Rights

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STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

License for Diversion and Use of Water

APPLICATION 14024

PERMIT 8538

LICENSE 4447

THIS IS TO CERTIFY, That **Dick Week**
Chiles Star Route, St. Helena, California

has made proof as of September 17, 1954
(the date of inspection) to the satisfaction of the State Water Rights Board of a right to the use of the water of
an unnamed stream in Napa County

tributary to **Pope Creek**

for the purpose of irrigation and stockwatering uses

under Permit 8538 of the State Water Rights Board and that said right to the use of said water has been perfected in accordance with the laws of California, the Rules and Regulations of the State Water Rights Board and the terms of the said permit; that the priority of the right herein confirmed dates from October 27, 1950; and that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed one hundred fifty (150) acre-feet per annum to be collected from about November 1 of each year to about July 1 of the succeeding year.

The point of diversion of such water is located north three hundred (300) feet and east one thousand two hundred (1,200) feet from W $\frac{1}{4}$ corner of Section 10, T 9 N, R 5 W, MDB&M, being within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 10.

A description of the lands or the place where such water is put to beneficial use is as follows: **Stockwatering use and irrigation of the following lands:**

20 acres within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 10, T 9 N, R 5 W, MDB&M.
2 acres within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 10, T 9 N, R 5 W, MDB&M.
15 acres within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 10, T 9 N, R 5 W, MDB&M.
8 acres within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 10, T 9 N, R 5 W, MDB&M.
20 acres within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 10, T 9 N, R 5 W, MDB&M.
10 acres within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 10, T 9 N, R 5 W, MDB&M.
25 acres within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 10, T 9 N, R 5 W, MDB&M.
100 acres total

All rights and privileges under this license including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the State Water Rights Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: JAN 15 1957

STATE WATER RIGHTS BOARD

By Leslie C. Jopson
Leslie C. Jopson
Chief Engineer



4-12-71 RECEIVED NOTICE OF ASSIGNMENT TO Incandescent

3-9-73 Records chg'd to show

J. C. Harney Trust + T. P.
Harney Trust No. 1 as owners

12-18-74 RECEIVED NOTICE OF ASSIGNMENT TO Butterfield Gas & Oil Co.

12-20-90 Not of argd to Pope Vineyards
6-2-92 argd to Juliana Vineyards

LICENSE 4447
STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

LICENSE
TO APPROPRIATE WATER

ISSUED TO Dick Weik

DATED JAN 15 1957

40140 7-86 4M ① SFO